

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF THE IMPACT OF) ADMINISTRATIVE
FEDERAL POLICY ON NATURAL GAS TO) CASE NO. 297
KENTUCKY CONSUMERS AND SUPPLIERS)

O R D E R

On January 17, 1986, the Commission initiated this case to investigate the impact of changes in federal policy toward the regulation of the natural gas industry on Kentucky consumers and suppliers. After completing its investigation, the Commission in its final Order held, inter alia, that natural gas utilities must obtain a Certificate of Public Convenience and Necessity before connecting their facilities to those of an end-user if the connection would enable the end-user to physically bypass a local gas distribution company ("LDC") to obtain natural gas.¹ In its Order on rehearing,² the Commission interpreted natural gas utilities to include interstate pipelines transporting natural gas for end-users.

Alleging that the Commission unlawfully and erroneously interpreted KRS 278.020 to apply to end-users of natural gas and interstate pipelines transporting natural gas in interstate commerce, Newport Steel Corporation and G.E. Appliances,

¹ Administrative Case No. 297, Order dated May 29, 1987, at 63.

² Id., Order dated October 23, 1987, at 12.

intervenors in this proceeding,³ brought an action for review of both Commission Orders in Franklin Circuit Court. They further alleged that the Natural Gas Act ("NGA") and the actions of the Federal Energy Regulatory Commission ("FERC") had pre-empted this Commission's regulatory authority over end-users and interstate pipelines transporting natural gas to end-users.

While this action was pending, three U.S. Courts of Appeals directly addressed the issue. Michigan Consolidated Gas Co. v. Panhandle Eastern Pipeline Co., 887 F.2d 1295 (6th Cir. 1989), cert. denied, 494 U.S. 1079 (1990); Pub. Util. Comm'n of California v. FERC, 900 F.2d 269 (D.C. Cir. 1990); Cascade Natural Gas Corp. v. FERC, 955 F.2d 1412 (10th Cir. 1992). Each held that, where an interstate pipeline is transporting gas interstate for hire directly to end-users, the arrangement is exclusively "the subject of federal regulation pursuant to the NGA because the arrangement involves the transportation of natural gas in interstate commerce, not a local sale." Cascade, 955 F.2d at 1419 (quoting Michigan Consol. Gas Co. v. FERC, 883 F.2d 117, 121 (D.C. Cir. 1989)). Such "bypass transactions do not entail the realm of local retail sales that Congress intended to reserve to the states." Id.

As a result of these decisions and upon the Commission's motion, Franklin Circuit Court remanded the matter to the

³ In the original administrative proceedings, Newport Steel Corporation and G.E. Appliances were represented by Kentucky Industrial Utility Consumers ("KIUC"), an unincorporated association of which they are members.

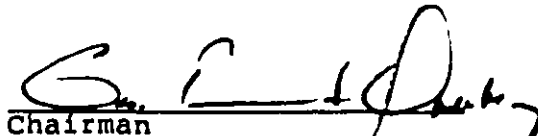
Commission with instructions that the Commission consider the effect of these decisions on its Order.⁴

IT IS THEREFORE ORDERED that any party to this proceeding may, within 30 days of the date of this Order, submit a written brief to the Commission on the following question:

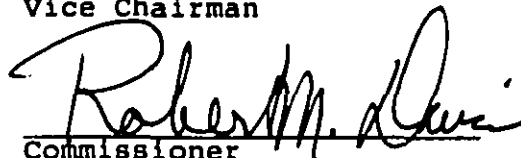
In light of the holdings in Michigan Consolidated Gas Co. v. Panhandle Eastern Pipeline Co., 887 F.2d 1295 (6th Cir. 1989), Pub. Util. of California v. FERC, 900 F.2d 269 (D.C. Cir. 1990), and Cascade Natural Gas Corp. v. FERC, 955 F.2d 1412 (10th Cir. 1992), may the Commission require interstate pipelines transporting natural gas for end-users to apply for a certificate of public convenience and necessity before permitting any end-user to connect its facilities to those of the transporting interstate pipeline where the connection will enable the end-user to physically bypass the distribution facilities of an LDC?

Done at Frankfort, Kentucky, this 8th day of February, 1993.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

⁴ Newport Steel Corp. and G.E. Appliances v. Pub. Serv. Comm'n, No. 87-CI-1652 (Franklin Cir. Ct. Nov. 23, 1992).